

To: Ms. Mary Rupp
Secretary to the Board - NCUA
1775 Duke Street
Alexandria, VA 22314-3428

From: (via email to: regcomments@ncua.gov) email subject line = [Bill Before - VP of Finance/STCU] - Comments on Advanced Notice of Proposed Rulemaking for Part 723

Re: Comments on Proposed Rulemaking for Part 723

Cc: saugustine@waleague.org, msroufe@waleague.org

The current compliance with correctly reporting member business loans is very difficult and I believe no system will be able to accurately report MBLs under the required criteria since loans fall in and out of the definition based on balance. It would take significant manual labor to achieve 100% compliance and ensure that various schedules, delinquency, balance, and available limit all use the this variable definition. A more scalable definition would allow the loan to be "coded" as an MBL and always report as such.

The solution is to redefine member business loan to mean "Any business purpose loan that does not exceed the amount of \$50,000 at inception". With this type of definition, each loan would be coded at inception and remain with that code for all balance, delinquency, activity reporting. All other definitions regarding amount, unfunded commitment, undisbursed proceeds, etc. could be left untouched. Being able to "code" the loan as an MBL would allow proper reporting on any call report schedule or examiner inquiry.

This methodology would also be helpful if census tract becomes a consideration in the definition of MBL.

The credit union understands that this change would in fact lower the amount of MBL's allowed since the smaller balances would remain an MBL for the life of the loan. A increase to the MBL limit could also compensate for this change.

Below is the suggested wording changes to the definition of "Business Loan" in NCUA §723.1(b)(3) to ensure better compliance with the law

PART 723 MEMBER BUSINESS LOANS

April 2006

Member Business Loans

§ 723.1–§ 723.2

§ 723.1 What is a member business loan?

(a) *General rule.* A member business loan includes any loan, line of credit, or letter of credit (including any unfunded commitments) where the borrower uses the proceeds for the following purposes:

- (1) Commercial;
- (2) Corporate;
- (3) Other business investment property or venture; or
- (4) Agricultural.

(b) *Exceptions to the general rule.* The following are not member business loans:

- (1) A loan fully secured by a lien on a 1 to 4 family dwelling that is the member's primary residence;
- (2) A loan fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions;
- (3) **Loan(s) to a member or an associated member which, when the net member business loan balances are added together, are equal to less than \$50,000;**
- (3) Any member business loan to a member or an associated member which, at inception, is equal to or less than \$50,000.

Other comments:

1. Changing the LTV on construction and development (C&D) loans from 75% to 80%
 - a. Agree? *Yes, as long as CU has adequate experience with C&D loans*
 - b. If so, what feedback can you give regarding the necessity of this change in light of the NCUA's waiver provisions that allow a credit union to make a loan with a higher LTV if granted by exception? *The credit union must have the proven ability (in-house or through a third party) to make and service construction loans. Doing business by waiver exception is not efficient, feasible or timely. A loan officer (and the member) needs to know at inception if the loan can be done. In today's competitive environment, telling a member that it looks like everything is in order but we have to request a waiver from our regulator is the same as telling the member to go to another financial institution.*
 - c. What suggestions does your CU have for mitigating risk in what are considered the riskiest type of MBL? *CU must have the experience with C&D loans and should not be making any such loans without proper experience (in-house or third party) to make and service those loans*
2. Definition of fleet be narrowed and LTV should be modified so credit unions are more competitive in this area
 - a. *no impact to STCU*
3. NCUA is concerned that it has not adequately explained how to establish the value of property for LTV calculation purposes, nor what costs and fees may be included in determining the borrower's equity in a project
 - a. Does CU feel that this information is adequately explained? *YES*
 - b. If not, how can it be clarified?
4. Compliance with two year two year minimum experience requirement for MBL lending for in-house and third party contractors
 - a. Does it need clarification? *NO.*
 - b. Is two year requirement reasonable or should it be increased/decreased? *It's reasonable and a credit union should outsource the requirement until they have at least that experience in-house.*
5. Confusion on whether or not a wholly or partially owned CUSO can be used to meet requirements
 - a. Does it need clarification? *NO*

- b. Does CU have any specific suggestions for clarification?
6. NCUA is concerned that CUs are unaware of the link between MBL regulations and regulations regarding loan participations and therefore have difficulty in accounting for MBL loan participations.
- a. Does CU think more guidance or clarification with link? *NO*
 - b. Suggested clarification/guidance *723.16(b) does weaken the credit union industry by limiting their ability to spread the risk among many credit unions. Credit Unions focus on MBLs to their own members first and are less willing to engage in participations because it uses up their MBL limit. NCUA should be encouraging participations and this could be done with a separate limit for MBL participations purchased.*
 - c. Is there additional guidance or information needed regarding the waiver process that can be employed if a credit union's participation in an MBL will exceed the aggregate MBL limit? *Again the waiver process is problematic because the process is not timely for the borrower.*
7. NCUA is concerned that CUs are insufficiently informed about waiver process if a CU wishes to participate in MBL loans to an extent that will cause the CU to exceed aggregate MBL limits
- a. Is additional guidance or info needed to inform CUs of this option? *NO*
 - b. Specific suggestions of guidance? *The waiver process is too inefficient and short sighted. As credit unions prove, through regulatory examination, their capabilities to make and service MBLs, they should become certified for higher levels of MBL activity (or not if experience in the credit union is lacking). Some of the CU confusion may be coming from the poor definition of MBL which is not scalable for larger MBL pools since MBL status is based on the current size of the loan. MBLs should be able to be coded as MBL or not and remain as such throughout the life of the loan.*
8. NCUA notes that MBL rule provides wide variety of waivers that CU can apply to enhance MBL program. CUs are not taking full advantage of waivers
- a. Does CU take advantage of waiver opportunities? *Not yet.*
 - b. Why or why not. *Given the political climate surrounding MBLs, the perception is that regulators are very hesitant to approve waivers, even if the credit union has shown the ability, experience, and systems to account for making and servicing MBLs.*